

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

RHONDA HALL,

Plaintiff,

V.

VERIZON COMMUNICATIONS, INC.,
and VERIZON NEW ENGLAND, INC.

Defendants.

Civil Action No. 3:05-cv-30002-MAP

**PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION
TO SUBMIT TO THE COURT ANY
FEDERAL LAW CLAIM FOR BACK PAY**

The Plaintiff respectfully submits this opposition to the defendants' pending Motion to Submit to the Court any Federal Law Claim for Back Pay. In support of their contention that the issue of back pay should be submitted to the court and not the jury, the defendants rely on decisions issued by the Courts of Appeal in the Second, Third and Seventh circuits. However, the position adopted by these other Courts of Appeal is not shared by the First Circuit. In *Johnson v. Spencer Press of Maine, Inc.*, 364 F.3d 368 (1st Cir., 2004), the court squarely addressed this issue in a Title VII employment discrimination case, and concluded:

Despite its equitable nature, back pay is therefore "a presumptive entitlement of a plaintiff who successfully prosecutes an employment discrimination case." In this circuit, juries are generally entrusted with

decisions on back pay when the jurors are already resolving issues of liability and compensatory damages.

Id. at 379-380 (citations omitted).¹

XI. CONCLUSION

For all the reasons set forth above, the plaintiff respectfully requests that the court deny the Defendant's Motion to Submit to the Court any Federal Law Claim for Back Pay..

Respectfully submitted,

PLAINTIFF RHONDA HALL
By her Attorney,

Dated: May 14, 2007

/s/ Hugh D. Heisler
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CERTIFICATE OF SERVICE

I, Hugh D. Heisler, hereby certify that a true copy of the foregoing Opposition was served electronically upon the attorney of record for the Defendants on May 14, 2007.

/s/ Hugh D. Heisler
Hugh D. Heisler

¹ In any event, the determination of both back pay and future pay under the plaintiff's state law claims under M.G.L. c. 151B will be submitted to the jury, so the practical effect of a decision on this motion will be somewhat limited. *See, Handrahan v. Red Roof Inns, Inc.*, 43 Mass.App.Ct. 13, 680 N.E.2d 568, 576 (Mass.App.Ct. 1997)("[t]he award of front pay in cases brought under c. 151B is compensatory in nature" and is a determination to be made by the jury).